

REMARKS

Claims 1-32 remain pending in the present application.

Section 121 Restrictions:

The Examiner indicates that restriction is required between Inventions I, II and III as listed on p. 2 of the Office Action. In response to this restriction requirement, Applicants election Invention II **with traverse** on procedural grounds.

Applicants traverse the restriction between Inventions II and III on the grounds that the Examiner did not state any reasons for requiring restriction between Inventions II and III. The Examiner gives reasons for requiring restriction between Inventions I and III and between Inventions I and II, but the Examiner does not give any reasons for requiring restriction between Inventions II and III. Therefore, Applicants respectfully traverse the restriction requirement between Inventions II and III on the grounds that no reasons have been given for requiring restriction between these two Inventions.

In regard to the restriction between Inventions I and II, the reason for restriction given by the Examiner is that the "subcombination has separate utility such as an inventory management database." However, embodiments of both claims 1 and 15 may be used in conjunction with an inventory management database. Applicants are not asserting that embodiments of claim 1 and embodiments of claim 15 cannot have different utilities. However, a proper restriction requirement requires the Examiner to expressly and correctly identify a separate utility. The Examiner is incorrect that an inventory management database is a separate utility. Therefore, the Examiner has not stated a proper restriction requirement.

In regard to the restriction between Inventions I and III, the reason for restriction given by the Examiner is that "the apparatus [of Invention I] can be used to practice another materially different process, e.g. a point of sale device." However, a point of sale

device is a device, not a materially different process. Therefore, the Examiner does not appear to have given an example of a materially different process. Moreover, neither claim 1 nor claim 28 excludes the use of a point of sale device. Applicants are not asserting that embodiments of claim 1 cannot be used to practice a materially different process. However, a proper restriction requirement requires the Examiner to expressly and correctly identify either a materially different process or a materially different apparatus. Since neither claim 1 nor claim 28 excludes the use of a point of sale device, the Examiner has not made the required showing.

The Examiner also requires restriction between the alleged species of Figs. 3-6 and 8-10. Applicants traverse the species restriction requirement for the following reasons. First, the restriction requirement is improper because Figs. 3-6 and Figs. 8-10 do not represent separate species. By definition, species must have mutually exclusive characteristics. According to M.P.E.P. § 806.04(f):

The general test as to when claims are restricted, respectively, to different species is that fact that one claim recites limitations which under the disclosure are found in a first species but not in a second, while a second claim recites limitations disclosed only for the second species and not the first. This is frequently expressed by saying that claims to be restricted to different species must recite the mutually exclusive characteristics of such species. (emphasis added).

Note that “mutually exclusive characteristics” is a requirement of the species as described in the disclosure. “Mutually exclusive characteristics” does not mean that one claim recites a limitation not expressly recited in another claim.

The alleged species enumerated by the Examiner are not described in the specification as having mutually exclusive characteristics. Fig. 3 illustrates an electronic purchasing system. Fig. 4 shows an example of data flow that may be used in conjunction with the electronic purchasing system of Fig. 3. Fig. 5 shows an example of line item approval processing for the electronic purchasing system of Fig. 3, and Fig. 6 is a more detailed illustration of the line item approval module of Fig. 3. Figs. 8 and 9 illustrate user interfaces for aspects of the line item approval process, and Fig. 10 shows

a data flow example for the line item approval process of the electronic purchasing system of Fig. 3. Thus, far from representing different mutually exclusive species, Figs. 3-6 and Figs. 8-10 illustrate various exemplary aspects of the same electronic purchasing system. It is clear from even a cursory reading of Applicants' disclosure that there is nothing mutually exclusive between Figs. 3-6 and Figs. 8-10. Therefore, by definition, Figs. 3-6 and Figs. 8-10 do not represent different species. Accordingly, the species restriction requirement is improper.

Second, the Examiner has not clearly identified each species. It is unclear as to whether the Examiner considers Figs. 3-6 to represent one species and Figs. 8-10 to represent a second species, or if the Examiner considers each of Figs. 3, 4, 5, 6, 8, 9 and 10 to represent seven different species. For purposes of this response, Applicants assume that the Examiner considers Figs. 3-6 to represent one species and Figs. 8-10 to represent a second species. Since an election is required even though the species restriction requirement is clearly erroneous, Applicants elect the species of Figs. 3-6. This election is made **with traverse** for the reasons stated above. Claims 1-32 are either generic to or read upon the elected species since none of the limitations of any of the claims are *excluded* from embodiments illustrated by Figs. 3-6.

CONCLUSION

Applicants submit the application is in condition for allowance, and an early notice to that effect is requested.

If any extension of time (under 37 C.F.R. § 1.136) is necessary to prevent the above referenced application from becoming abandoned, Applicants hereby petition for such extension. If any fees are due, the Commissioner is authorized to charge said fees to Meyertons, Hood, Kivlin, Kowert, & Goetzel, P.C. Deposit Account No. 501505/5681-90200/RCK.

Also enclosed herewith are the following items:

- ☒ Return Receipt Postcard
- ☐ Petition for Extension of Time
- ☐ Notice of Change of Address
- ☐ Other:

Respectfully submitted,



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